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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77476; File No. SR-BATS-2016-17)

March 30, 2016

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend BATS' Rules Regarding the Auction Process for Securities Subject to an Initial Public Offering

I. Introduction

On February 10, 2016, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend BATS Rule 11.23, entitled "Auctions," with regard to the handling of orders during an initial public offering ("IPO") auction. On February 22, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on February 29, 2016.⁴ The Commission has received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to: (1) amend BATS Rule 11.23(a)(8) to modify the term "Eligible Auction Order" to delineate the types of orders that may participate in an auction for a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange corrected a technical error regarding incorrect terminology used in a footnote and clarified a sentence regarding an order with a time-in-force of "Regular Hours Only" ("RHO") that would be converted to an order with a time-in-force of "Day" under the proposed rule change.

⁴ See Securities Exchange Act Release No. 77222 (February 24, 2016), 81 FR 10345 (SR-BATS-2016-17) ("Notice").

BATS listed corporate security⁵ in an IPO on the Exchange (“IPO Auction”);⁶ and (2) amend subparagraphs (d)(1)(A) and (d)(2) of BATS Rule 11.23 to modify the rules governing the Quote-Only Period⁷ during an Auction.

A. Changes to the Definition of Eligible Auction Order

Currently, “Eligible Auction Order” is defined as any Market-On-Open (“MOO”),⁸ Limit-On-Open (“LOO”),⁹ Late-Limit-On-Open (“LLOO”),¹⁰ Market-On-Close (“MOC”),¹¹ Limit-On-Close (“LOC”),¹² or Late-Limit-On-Close (“LLOC”)¹³ order that is entered in compliance with its respective cutoff for an Opening or Closing Auction,¹⁴ any RHO¹⁵ order prior to the Opening Auction, any Limit Order¹⁶ or Market Order¹⁷ not designated to exclusively

⁵ A BATS listed corporate security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange’s Rules that is not an Exchange Traded Product (“ETP”) listed on the Exchange pursuant to Exchange Rule 14.11.

⁶ See Notice, supra note 4, at 10345-48. The Exchange also proposes a conforming change to BATS Rule 11.1, entitled “Hours of Trading and Trading Days.” See Notice, supra note 4, at 10346, n.19.

⁷ See BATS Rule 11.23(a)(17) (defining “Quote-Only Period” as a designated period of time prior to a Halt Auction, a Volatility Closing Auction, or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction). A “User” is means any Member or Sponsored Participant who is authorized to obtain access to the Exchange’s system pursuant to BATS Rule 11.3. See BATS Rule 1.5(cc).

⁸ See BATS Rule 11.23(a)(16).

⁹ See BATS Rule 11.23(a)(14).

¹⁰ See BATS Rule 11.23(a)(12).

¹¹ See BATS Rule 11.23(a)(15).

¹² See BATS Rule 11.23(a)(13).

¹³ See BATS Rule 11.23(a)(11).

¹⁴ The Opening and Closing Auction processes are described in BATS Rules 11.23(b) and (c).

¹⁵ See BATS Rule 11.9(b)(7).

¹⁶ See BATS Rule 11.9(a)(1).

¹⁷ See BATS Rule 11.9(a)(2).

participate in the Closing Auction entered during the Quote-Only Period of an IPO Auction,¹⁸ and any Limit or Market Order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of a Halt Auction.¹⁹ The Exchange proposes to amend the definition of Eligible Auction Orders to either reject, convert, or ignore certain types of orders.²⁰ As proposed, Limit Orders and BATS Market Orders, the two main types of orders offered by the Exchange, that are entered during the Quote-Only Period would be allowed to participate in an IPO Auction for a BATS listed corporate security provided they do not also include one or more of the modifiers described below.²¹

Types of Orders to be Accepted or Rejected

The Exchange proposes to exclude the following types of orders from participation in an IPO Auction and would reject such orders: (1) Stop Orders²² and Stop Limit Orders;²³ (2) Pegged Orders,²⁴ Mid-Point Peg Orders,²⁵ Market Maker Peg Orders²⁶ and Supplemental Peg

¹⁸ See BATS Rule 11.23(d)(1)(A) (describing Quote-Only Period).

¹⁹ See BATS Rule 11.23(a)(8). The Exchange also proposes to amend BATS Rule 11.1(a) to make clear that it will not accept BATS Market Orders that are not Eligible Auction Orders prior to 8:00 a.m. Eastern Time, see Notice, *supra* note 4, at 10346, n.19, and to make conforming changes to BATS Rules 11.23(b) and 11.23(c).

²⁰ See Notice, *supra* note 4, at 10345.

²¹ See Notice, *supra* note 4, at 10345-48. The Exchange does not propose to amend the types of Eligible Auction Orders that may participate in an auction for a newly listed ETP. See *id.* at 10345. An Exchange Traded Product is a security that is listed on the Exchange pursuant to BATS Rule 14.11.

²² See BATS Rule 11.9(c)(17).

²³ See BATS Rule 11.9(c)(18).

²⁴ See BATS Rule 11.9(c)(8).

²⁵ See BATS Rule 11.9(c)(9).

²⁶ See BATS Rule 11.9(c)(16).

Orders;²⁷ (3) Minimum Quantity Orders²⁸ and Discretionary Orders;²⁹ (4) MOC, LOC and LLOC orders; and (5) orders with a time-in-force of Fill-or-Kill (“FOK”)³⁰ and orders with a time-in-force of Good-‘til-Day (“GTD”)³¹ with an expiration time earlier than 4:00 p.m. Eastern Time. Such orders entered to participate in an IPO Auction would be rejected.³²

Types of Orders to be Converted

The Exchange also proposes to specify the types of orders that would be converted by the Exchange for purposes of participating in the IPO Auction for a BATS listed corporate security.³³ Specifically, under the proposal, the following types of orders would be converted: (1) Market Orders with a time-in-force of Immediate-or-Cancel (“IOC”)³⁴ would be converted to a MOO and a Limit Order with a time-in-force of IOC would be converted to a LOO; (2) orders with a time-in-force of RHO would be converted to orders with a time-in-force of Day; and (3) any orders eligible to be routed would be converted to a BATS Only Order.³⁵ Under the proposal, upon completion of the IPO Auction, any remainder not executed in the auction would be placed on the BATS Book, executed, cancelled or routed away in accordance with the converted terms of the order. Such orders would not revert back to the original type modifier the User included with the order.³⁶

²⁷ See BATS Rule 11.9(c)(19).

²⁸ See BATS Rule 11.9(c)(5).

²⁹ See BATS Rule 11.9(c)(10).

³⁰ See BATS Rule 11.9(b)(6).

³¹ See BATS Rule 11.9(b)(4).

³² See proposed BATS Rule 11.23(a)(8)(A). See also Notice, supra note 4, at 10346.

³³ See proposed BATS Rule 11.23(a)(8)(B). See also Notice, supra note 4, at 10346-47.

³⁴ See BATS Rule 11.9(b)(1).

³⁵ See proposed BATS Rule 11.23(a)(8)(B). See also Notice, supra note 4, at 10346.

³⁶ See Notice, supra note 4, at 10346.

Modifiers to be Ignored

The Exchange also proposes to ignore certain order modifiers for orders that have been entered to participate in an IPO Auction.³⁷ Specifically, the following modifiers would be handled as follows during an IPO Auction: (1) a Match Trade Prevention (“MTP”) modifier,³⁸ would not be applied until the IPO Auction is complete, but it would be applied in the event any unexecuted portion is placed on the BATS Book;³⁹ (2) an instruction to treat an order as an Attributable Order⁴⁰ would not be applied in an IPO Auction and would be permanently ignored with respect to the order, meaning that any such order’s execution would be displayed anonymously;⁴¹ (3) an Intermarket Sweep Order (“ISO”)⁴² Instruction or a Post Only instruction included with a Limit Order would not be applied in an IPO Auction and would be permanently ignored with respect to the order;⁴³ (4) the Maximum Remove Percentage of a Partial Post Only at Limit Order⁴⁴ would not be applied in an IPO Auction and would be permanently ignored with respect to the order; and (5) the replenishment range of a Reserve Order with a Random

³⁷ See proposed BATS Rule 11.23(a)(8)(C). See also Notice, supra note 4, at 10347-48.

³⁸ See BATS Rule 11.9(f).

³⁹ Pursuant to BATS Rule 11.9(f), any incoming order designated with an MTP modifier is normally prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same User. Under the proposal, the MTP Modifier would be ignored during an IPO Auction, and such opposite side orders originating from the same User would be eligible to be matched against each other. Upon completion of the IPO Auction, an MTP modifier would be recognized again, and any remainder not executed in the auction would be placed on the BATS Book and executed or cancelled in accordance with the original MTP modifier appended to the order. See Notice, supra note 4, at 10347.

⁴⁰ See BATS Rule 11.9(c)(14).

⁴¹ See Notice, supra note 4, at 10347.

⁴² See BATS Rule 11.9(d).

⁴³ See Notice, supra note 4, at 10347.

⁴⁴ See BATS Rule 11.9(c)(7).

Replenishment instruction⁴⁵ would not be applied in an IPO Auction and would be permanently ignored with respect to the order.⁴⁶ Thus, with the exception of MTP modifiers, all modifiers listed above would not be further considered with respect to an order upon completion of the IPO Auction, and any remainder not executed in the auction would be placed on the BATS Book, executed, cancelled, or routed away in accordance with the modified terms of the order.⁴⁷

B. Changes to the Quote-Only Period

The Quote-Only Period is the designated period of time prior to a Halt Auction, a Volatility Closing Auction, or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction.⁴⁸ Currently, the Quote-Only Period for an IPO Auction begins fifteen (15) minutes plus a short random period prior to such IPO Auction.⁴⁹

The Exchange proposes to extend the Quote-Only Period with respect to an IPO Auction for an ETP such that it would commence at 8:00 a.m.,⁵⁰ which is the beginning of the Exchange's Pre-Opening Session.⁵¹ The Exchange also proposes to extend the Quote-Only Period with respect to an IPO Auction for a BATS listed corporate security to begin at a time announced in advance by the Exchange that would be between fifteen (15) and thirty (30) minutes plus a short random period prior to such IPO Auction.⁵² The Exchange would determine the length of time of the Quote-Only Period for a BATS listed corporate security (i.e., what time

⁴⁵ See Notice, supra note 4, at 10348, n.38 (citing BATS Rule 11.9(c)(1)(A)).

⁴⁶ See Notice, supra note 4, at 10347-48.

⁴⁷ See Notice, supra note 4, at 10348.

⁴⁸ See BATS Rule 11.23(a)(17). See also Notice, supra note 4, at 10348.

⁴⁹ See BATS Rule 11.23(d)(1)(A).

⁵⁰ See proposed BATS Rule 11.23(d)(1)(A).

⁵¹ See BATS Rule 1.5(r).

⁵² See proposed BATS Rule 11.23(d)(1)(A).

between fifteen (15) and thirty (30) minutes) in consultation with the issuer of the IPO Security and would announce the length of time for the Quote-Only Period in advance of the commencement of such period.⁵³ The Exchange also proposes to make a technical amendment to paragraph (d)(2)(A) of BATS Rule 11.23 to replace the current term “quotation only period” with the defined term “Quote Only Period.”

Finally, the Exchange proposes to extend the Quote-Only Period in the event of a technical or systems issue at the Exchange that may impair the ability of Users to participate in the IPO Auction or of the Exchange to complete the IPO Auction.⁵⁴ As proposed, the Exchange would notify market participants in the event of any extension to the Quote-Only Period, including due to a technical or systems issue during an IPO Auction. Such notice would provide details regarding the circumstances and length of the extension.⁵⁵

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable

⁵³ See Notice, supra note 4, at 10348. According to the Exchange, the scope of market participants notified regarding the anticipated commencement of the Quote-Only Period (or extension of Quote-Only Period) would include, but would not be limited to Members of the Exchange. Such notice would also include those market participants, individuals or entities that have subscribed to the Exchange’s notification system. The Exchange represents that it intends to send notifications regarding the Quote-Only Period via e-mail, as it does with most public notifications today. The Exchange further notes that it does, in certain circumstances, post information on its public website in addition to e-mail dissemination. See id., n.41.

⁵⁴ See proposed BATS Rule 11.23(d)(2)(B)(iv). See also Notice, supra note 4, at 10348. Currently, the Exchange may extend the Quote-Only Period under Rule 11.23(d)(2)(B) for an Auction beyond the stated timeframes where: (i) there are unmatched Market Orders on the Auction Book associated with the auction; (ii) in an IPO Auction, the underwriter requests an extension; or (iii) where the Indicative Price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the auction. See id.

⁵⁵ See proposed BATS Rule 11.23(d)(2)(C). See also Notice, supra note 4, at 10348.

to a national securities exchange.⁵⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Changes to the Definition of Eligible Auction Order

The Exchange believes that refining the types of orders processed in an IPO Auction and/or those that would be placed onto the BATS Book⁵⁸ following such IPO Auction would simplify and reduce the complexity of the IPO Auction for BATS listed corporate securities.⁵⁹ The Exchange further believes that doing so would aid in ensuring a robust, but streamlined, IPO Auction process for a newly listed corporate securities.⁶⁰

Specifically, the Exchange believes it is reasonable to reject orders with the characteristics described above from participating in the IPO Auction because doing so would aid in reducing systems complexity and risk associated both with completing the IPO Auction and with transferring any unexecuted portion of such orders to the BATS Book once the auction is complete.⁶¹ Further, the Exchange states that the orders it proposes to reject are not commonly utilized and therefore the rejection of such orders should not have a significant impact

⁵⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ See BATS Rule 1.5(e) (defining BZX Book as the System's electronic file of orders).

⁵⁹ See Notice, supra note 4, at 10345.

⁶⁰ See id.

⁶¹ See id. at 10346.

on its Members.⁶² In addition, the Exchange believes these types of orders contain certain attributes that are not compatible with the IPO Auction process.⁶³

In addition, in contrast to those orders that would be rejected, the Exchange notes that the types of orders the Exchange proposes to convert are more commonly used by Members than those order types the Exchange proposes to reject.⁶⁴ The Exchange believes that it is reasonable to convert rather than reject the order types described above because such orders are more commonly used by Members and doing so would accommodate those Members that have automated their systems to send orders to the Exchange without significantly altering the operation of the order from what the Member originally instructed.⁶⁵ According to the Exchange, such Members also may not be able to re-submit a rejected order with the correct modifier in time to participate in the IPO Auction.⁶⁶ Therefore, the Exchange notes that it is concerned that rejecting, rather than converting those types of orders as proposed, would inappropriately burden those Members and deter their participation in an IPO Auction.⁶⁷

The Exchange further believes it is reasonable to ignore certain modifiers on an order during the IPO Auction because doing so would simplify and reduce the complexity of the auction process or such modifiers are incompatible with the IPO Auction process.⁶⁸ For instance, the Exchange believes that it is reasonable to ignore instructions to treat an order as an

⁶² See id. See also BATS Rule 1.5(n)(defining “Member” as any registered broker or dealer that has been admitted to membership in the Exchange).

⁶³ See Notice, supra note 4, at 10346.

⁶⁴ See id. at 10346-47.

⁶⁵ See id. at 10347.

⁶⁶ See id.

⁶⁷ See id.

⁶⁸ See id. at 10347-49.

Attributable Order because orders entered into an IPO Auction are not displayed individually, but rather, are displayed as aggregated interest in the Exchange's data feeds.⁶⁹

For the reasons stated above, the Commission believes that amending the definition of Eligible Auction Orders to reject, convert, or ignore certain types of orders in connection with the IPO Auction process for a BATS listed corporate security is consistent with Section 6(b)(5) of the Act. The Commission believes that it is reasonable for the Exchange to seek to simplify and reduce the complexity of the IPO Auction process and to clearly describe the treatment of those orders and modifiers submitted during an IPO Auction that would be rejected, converted, or ignored.⁷⁰

B. Changes to the Quote-Only Period

The Exchange states that it believes that a longer Quote-Only Period for ETPs is warranted because it will encourage the entry of orders prior to an IPO Auction for newly issued ETPs, which typically have lower participation rates especially as compared to IPO Auctions for corporate securities.⁷¹ The Exchange further states that while an IPO Auction for a corporate security is typically conducted at least thirty minutes after the commencement of Regular Trading Hours, an IPO Auction for a newly issued ETP is typically conducted at the beginning of Regular Trading Hours (i.e., 9:30 Eastern Time), and thus may not afford much time for

⁶⁹ See id. at 10347.

⁷⁰ The Commission also believes that the Exchange's proposal to amend BATS Rule 11.1(a) to make clear that it will not accept BATS Market Orders that are not Eligible Auction Orders prior to 8:00 a.m. Eastern Time and to make conforming changes to BATS Rules 11.23(b) and 11.23(c) is consistent with Act. The Commission believes that these proposed changes would help reduce confusion among Members regarding the operation of BATS Market Orders that are entered prior to the start of the Exchange's Pre-Opening Session and the operation of the Exchange's rules.

⁷¹ See Notice, supra note 4, at 10348.

participants to enter orders prior to such auction.⁷²

In addition, the Exchange believes it is reasonable to extend the Quote-Only Period for a BATS listed corporate security to begin at a time announced in advance by the Exchange that shall be between fifteen and thirty minutes plus a short random period prior to such IPO Auction because it will allow market participants more time to enter orders to participate in the IPO Auction.⁷³ Further, according to the Exchange, such an extension would afford underwriters more time to evaluate the scope of demand for, and supply of, the security subject to the IPO Auction (“IPO Security”), which in turn, would allow the underwriter to make a more informed decision about the appropriate time to initiate the opening of the IPO Security through the IPO Auction.⁷⁴

The Exchange also believes it is reasonable to extend the Quote-Only Period in the event of a technical or systems issue at the Exchange that may impair the ability of market participants to participate in an IPO Auction as such an event may prevent market participants from entering orders during the Quote-Only Period, which in turn could result in less liquidity that may prevent the underwriters from adequately accessing the trading interest of the IPO Security.⁷⁵ Thus, the Exchange believes it is reasonable to extend the Quote-Only Period in the event of a technical or systems issue to provide market participants adequate time to enter orders to participate in the IPO auction.⁷⁶ Finally, the Exchange states that its proposal to make a technical amendment to paragraph (d)(2)(A) of BATS Rule 11.23 to replace the current term “quotation only period”

⁷² See id.

⁷³ See id. at 10348-49.

⁷⁴ See id.

⁷⁵ See id. at 10348-49.

⁷⁶ See id.

with the defined term “Quote Only Period” is intended to make the rule easier to understand and avoid potential investor confusion.⁷⁷

For the foregoing reasons, the Commission believes that the proposed changes to the Quote-Only Period are consistent with the Act because these changes are designed to allow market participants additional time in advance of an IPO Auction, and the proposed technical amendment to BATS Rule 11.23(d)(2)(A) conforms the terminology used in that section of BATS Rule 11.23(d) with the current terminology used in the BATS rule book.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁷⁸ that the proposed rule change (SR-BATS-2016-17) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁹

Robert W. Errett
Deputy Secretary

⁷⁷ See id. at 10349.

⁷⁸ 15 U.S.C. 78s(b)(2).

⁷⁹ 17 CFR 200.30-3(a)(12).

